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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,130	09/10/2003	Christopher Patrick Lawson	GJ-246J	3558
7590 IANDIORIO & TESKA INTELLECTUAL PROPERTY LAW ATTORNEYS 260 BEAR HILL ROAD WALTHAM, MA 02451-1018			EXAMINER NATNITHITHADHA, NAVIN	
			ART UNIT 3735	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/08/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/659,130	LAWSON, CHRISTOPHER PATRICK
	Examiner Navin Natnithithadha	Art Unit 3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 January 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 January 2007 has been entered.

### ***Response to Amendment***

2. Claims 1 and 2 have been amended. Claim 13 has been cancelled. Claims 1-12 are pending.

### ***Response to Arguments***

3. Applicant's arguments, see Remarks, pages 7-8, filed 12 January 2007, with respect to the added material, "In response to at least one of flow and pressure signals obtained consequent upon the person breathing into the mouthpiece", constituted new matter have been fully considered and are persuasive. The objection of the amendment filed 05 June 2006 has been withdrawn. For the same reason above, the 35 U.S.C. 112, first paragraph, rejection of claims 1-13 has been withdrawn.

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4. Applicant's arguments, see Remarks, page 9, filed 12 January 2007, with respect to the rejection(s) of claim(s) 1-4, 6, and 13 under 35 U.S.C. 102(b) as being anticipated by Jiang have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

5. Applicant's arguments, see Remarks, page 9, filed 12 January 2007, with respect to the rejection(s) of claim(s) 1-4 and 13 under 35 U.S.C. 102(b) as being anticipated by Hillsman have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

6. Applicant's arguments, see Remarks, page 9-10, filed 12 January 2007, with respect to the rejection(s) of claims (2) 1, 2, and 6-12 under 35 U.S.C. 102(b) as being anticipated by Holscher have been fully considered but they are not persuasive.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention..

7. Claims 6-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6-12 are claiming subject matter, e.g. a rotary variable orifice valve, a cylindrical member having an aperture, an aperture, and a sleeve having an aperture, that conflict with the subject matter in claim 1. Thus, it appears claims 6-12 are redundant. The Examiner suggests cancellation of these claims.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 2, and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Holscher, US 6,630,411 A ("Holscher"), and, in the alternative, rejected under 35 U.S.C. 103(a) as being unpatentable over Holscher in view of Hillsman, WO/98/14115 A1 ("Hillsman").

Claims 1, 2, and 6-12: Holscher teaches an apparatus (see figs. 1 and 5-8), comprising: a mouthpiece (inlet tube) 20/130; a flow transducer 18; a pressure transducer 16; a rotary variable orifice valve 14; a motor (valve motor) 78; and a microprocessor controller 26, wherein the microprocessor controller/circuit 26 controls the motor to cause the rotary variable orifice valve 14 to vary its orifice size in response to at least one of flow and pressure signals obtained consequent upon the person breathing into the mouthpiece (see col. 4, ll. 60-65), wherein the orifice size maintains a constant predetermined pressure (controller 26 receives signals from phase detection circuit 24, which receives a signal from the flow sensor see col. 4, ll. 60-65) and enables measurement of the flow rate or pressure generated by the person and enables measurement of the flow rate generated by the person (matter of intended use of rotary variable orifice valve 14), and wherein the variable orifice valve is a rotary variable orifice valve comprising a cylindrical member (shiftable valve element, which includes support bodies 114 and valve fingers 116) 72, a longitudinally extend bore (motor shaft)

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80 in the cylindrical member 72, a first lateral aperture (exhaust ports) 122 positioned in a wall of the cylindrical member 72 and between ends of the cylindrical member 72, a sleeve (structure including the valve base 70 and valve element cover 74) 70/74, a longitudinally extending bore (upper section) 82 in the sleeve 70/74, and a second lateral aperture (recesses) 96 positioned in a wall of the sleeve between ends of the sleeve.

In the alternative, although "enables measurement of the flow rate or pressure generated by the person and enables measurement of the flow rate generated by the person" is a matter of intended use of Holscher's rotary variable orifice valve 14, Hillman teaches this subject matter (see pg. 14, ll. 2-6, and pg. 15, ll. 1-6). It would have been obvious to one of ordinary skill in the art to modify Holscher's rotary variable orifice valve to used in Hillman's respiratory testing apparatus in order to control breathing conditions for monitor a patient's respiratory parameters (see Hillman, Abstract).

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holscher, as applied to claim 1 above, and, in the alternative, further in view of Hillsman.

Claims 3 and 4: Although not disclosed in Holscher, it is obvious to one of ordinary skill in the art that a display and a keypad/keyboard is connected to Holscher's pressure

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controller 26 in order to operate Holscher's apparatus. In addition, these features do not appear critical to the Applicant's invention.

In the alternative, Hillsman teaches a personal computer 14, which is known in the art to comprise a monitor and a keyboard, connected to a pressure transducer 5, flow transducer 4 and a variable orifice 3 (see fig. 2).

However, Hillsman teaches an apparatus (see fig. 2), comprising: a mouthpiece (not labeled); a flow transducer 4; a pressure transducer 5; a flat plate or rotary variable orifice valve 3 (see figs. 3A, 3B, 3C); a motor 28; a display 6 and a microprocessor controller (computer) 14, the microprocessor controller 14 being connected to the pressure transducer 5 and flow transducer 4.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holscher, as applied to claim 1 above, and further in view of either Bacaner et al, US 4,966,141 (hereinafter referred to as Bacaner).

Claim 5: Holscher does not teach the mouthpiece has a flange. However, Bacaner teaches a disposable mouthpiece 200 including a flange 203 (see fig. 19 and col. 19, lines 52-53). Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Jiang's mouthpiece to include flange as taught by Bacaner in order to provide a disposable mouthpiece that effectively engages the face of the patient surrounding the mouth (see Bacaner, col. 19, lines 55-57).

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system; contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha  
Patent Examiner  
Art Unit 3735

NN  
02/02/2007